

THE SUTTON LAW FIRM

November 16, 2012

VIA FAX & U.S. MAIL

Jeff S. Jordan, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, NW,
Washington, DC 20463

RE: MUR- 6673: FEC Complaint Against David Lee for Supervisor 2012

Dear Mr. Jordan:

We are in receipt of your letter of November 1, 2012, as well as the October 16, 2012 complaint filed by Ms. Wendolyn Aragon. We appreciate the opportunity to respond to the complaint, and are confident that the Commission will determine that no action should be taken against the David Lee for Supervisor 2012 campaign.

First, Ms. Aragon alleges that the campaign door hanger in question misleads voters by using colors and slogans similar to the Obama for America 2012 campaign. She implies that in order for the Lee campaign to use these features of the President's campaign, the door hanger must have included a disclaimer stating that "it is not DNC or Obama-Biden 2012 material." Without conceding Ms. Aragon's factual contentions, the complaint cites no provision within the jurisdiction of the Commission that requires campaigns to either refrain from using a Presidential campaign's themes, or compels a campaign to include a disclaimer noting that the material is not authorized by a Presidential campaign. Moreover, Ms. Aragon acknowledges that the door hanger "is clearly shown to be paid for by David Lee for Supervisor 2012."

Second, Ms. Aragon notes that the door hanger does not "state any disclaimers that no candidate on the material necessarily endorses another candidate appearing on the material." Again, however, the complaint cites no provision of law explaining that the Commission possesses jurisdiction over such an issue. And to the best of our knowledge, no such disclaimer is required under state or federal law.

Third, Ms. Aragon states that the door hanger fails to provide the ID number issued to the David Lee for Supervisor 2012 campaign by the California Fair Political Practices Commission. But there is no such requirement for local candidates under FECA. And even under California state law, the required disclaimer on door hangers includes only "Paid for by" and the name of the Committee, which, as Ms. Aragon concedes, was properly included on the door hanger at issue.

Last, Ms. Aragon argues that BCRA "prohibits the mixing of expenditures on local and

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federal offices without applying for the proper federal funding." Read charitably, Ms. Aragon appears to be invoking 11 Code of Fed. Regs. section 300.71, which does place certain limitations on "public communications" by local candidates if they promote, support, oppose, or attack a candidate for federal office.¹ The funds paying for such communications must be "federal funds," meaning that they "comply with the limitations, prohibitions, and reporting requirements of the act." (11 Code of Fed. Regs. section 300.2(g).)

Funds raised by the David Lee for Supervisor 2012 campaign fully satisfy the definition of federal funds in this context. Notably, the limit on contributions from individuals and political action committees in San Francisco, including separate segregated funds, is \$500, well below the relevant federal contribution limits. (S.F. Cal. & Govt. Conduct Code section 1.114(a) (copy enclosed).) Additionally, San Francisco prohibits corporate contributions to Supervisorial candidate committees. (Id. at 1.114(b).) And the campaign has of course complied with relevant law prohibiting contributions from foreign nationals and banks. Furthermore, it has meticulously filed campaign reports with the San Francisco Ethics Commission, which are available for public examination and review. (S.F. Ethics Commission Campaign Finance Filing and Data, at <http://www.sfethics.org/ethics/2012/05/campaign-finance-filings-and-data.html>.) In sum, any payment it made for the door hanger at issue was made with "federal funds," such that it did not violate the Federal Elections Campaign Act.

For these reasons, the complaint against the David Lee for Supervisor 2012 campaign should be dismissed with no action taken by the Commission. Thank you for your time and consideration.

Sincerely,


James Sutton

cc: David Lee
Thomas Li (via U.S. Mail only)

Attachment
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¹Separately, note that the payments for these door hangers did not constitute expenditures at all, since they qualified under the "coattail" provisions of 11 C.F.R. section 100.48. Moreover, the FEC evidently has yet to state clearly that door hangers constitute a public communication in this context. (FEC Advice Letter to Keith A. Davis (2/19/04) No. AO 2003-37 n. 16 [holding that whether door hangers were public communications was immaterial to the opinion's conclusion]; cf. FEC Advice Letter to Rand Hoch (3/7/88) No. 1988-1 [distribution of palm cards was not a public communication].)

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San Francisco Campaign and Governmental Conduct Code

SEC. 1.114. CONTRIBUTION LIMITS.

(a) LIMITS ON CONTRIBUTIONS TO CANDIDATES.

(1) **Per Candidate Limit.** No person other than a candidate shall make, and no campaign treasurer for a candidate committee shall solicit or accept, any contribution which will cause the total amount contributed by such person to such candidate committee in an election to exceed \$500.

(2) **Overall Limit.** No person shall make any contribution which will cause the total amount contributed by such person to all candidate committees in an election to exceed \$500 multiplied by the number of City elective offices to be voted on at that election.

(b) **LIMITS ON CONTRIBUTIONS FROM CORPORATIONS.** No corporation organized pursuant to the laws of the State of California, the United States, or any other state, territory, or foreign country, whether for profit or not, shall make a contribution to a candidate committee, provided that nothing in this subsection shall prohibit such a corporation from establishing, administering, and soliciting contributions to a separate segregated fund to be utilized for political purposes by the corporation, provided that the separate segregated fund complies with the requirements of Federal law including Sections 432(e) and 441b of Title 2 of the United States Code and any subsequent amendments to those Sections.

(c) LIMITS ON CONTRIBUTIONS TO COMMITTEES.

(1) **Per Committee Limit.** No person shall make, and no committee treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person to the committee to exceed \$500 per calendar year.

(2) **Overall Limit.** No person shall make, and no committee treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person to all committees to exceed \$3,000 per calendar year.

(3) **Definitions.** For purposes of this Subsection, "committee" shall mean any committee making expenditures to support or oppose a candidate, but shall not include candidate committees.

(d) AGGREGATION OF AFFILIATED ENTITY CONTRIBUTIONS.

(1) **General Rule.** For purposes of the contribution limits imposed by this Section and Section 1.120 the contributions of an entity whose contributions are directed and controlled by any individual shall be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual.

(2) **Multiple Entity Contributions Controlled by the Same Persons.** If two or more entities make contributions that are directed and controlled by a majority of the same persons, the contributions of those entities shall be aggregated.

(3) **Majority-Owned Entities.** Contributions made by entities that are majority-owned by any person shall be aggregated with the contributions of the majority owner and all other entities majority-owned by that person, unless those entities act independently in their decisions to make contributions.

(4) **Definition.** For purposes of this Section, the term "entity" means any person other than an individual and "majority-owned" means a direct or indirect ownership of more than 50 percent.

(e) **CONTRIBUTOR INFORMATION REQUIRED.** If the cumulative amount of contributions received from a contributor is \$100 or more, the committee shall not deposit any contribution that causes the total amount contributed by a person to equal or exceed \$100 unless the committee has the following information: the contributor's full name; the contributor's street address; the contributor's occupation; and the name of the contributor's employer or, if the contributor is self-employed, the name of the contributor's business. A committee will be deemed not to have had the required contributor information at the time the contribution was deposited if the required contributor information is not reported on the first campaign statement on which the contribution is required to be reported.

(f) **FORFEITURE OF UNLAWFUL CONTRIBUTIONS.** In addition to any other penalty, each committee that receives a contribution which exceeds the limits imposed by this Section or which does not comply with the requirements of this Section shall pay promptly the amount received or deposited in excess of the amount permitted by this Section to the City and County of San Francisco and deliver the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided that the Ethics Commission may provide for the waiver or reduction of the forfeiture.

(g) **RECEIPT OF CONTRIBUTIONS.** A contribution to a candidate committee or committee making expenditures to support or oppose a candidate shall not be considered received if it is not cashed, negotiated, or deposited and in addition it is returned to the donor before the closing date of the campaign statement on which the contribution would otherwise be reported; except that a contribution to a candidate committee or committee making expenditures to support or oppose a candidate made before an election at which the candidate is to be voted on but after the closing date of the last campaign statement required to be filed before the election shall not be considered to be deemed received if it is not cashed, negotiated or deposited and is returned to the contributor within 48 hours of receipt. For all committees not addressed by this Section, the determination of when contributions are considered to be received shall be made in accordance with the California Political Reform Act, California Government Code Section 81000, et seq.

(Added by Ord. 71-40, File No. 000358, App. 4/28/2000; amended by Proposition O, 11/7/2000; Ord. 141-03, File No. 038034, App. 6/27/2003; Ord. 1-06, File No. 031439, App. 1/28/2006; Ord. 228-06, File No. 060381, App. 9/14/2006; Ord. 234-08, File No. 090829, App. 11/2/2009)

(Derivation: Former Administrative Code Section 16.588; amended by Ord. 79-83, App. 2/18/83; Proposition N, 11/7/95; Ord. 126-06, File No. 060033, Effective without the signature of the

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Mayor 6/23/2006)

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